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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MULTIVEN, INC., a Delaware corporation,

Plaintiff,

v.

CISCO SYSTEMS, INC., a California
corporation,

Defendant.

CASE NO. C 08-05391 JW-RS

**STIPULATION AND ~~PROPOSED~~
ORDER REGARDING PROCEDURES
FOR EXPERT WITNESS DISCOVERY**

United States Magistrate Judge:
The Hon. Richard Seeborg

CISCO SYSTEMS, INC., a California
corporation,

Counterclaimant,

v.

MULTIVEN, INC., a Delaware corporation;
PINGSTA, INC., a Delaware corporation; and
PETER ALFRED-ADEKEYE, an individual,

Counterdefendants.

1 The parties hereby stipulate and agree upon the following discovery procedures in connection
2 with expert witnesses in the above-referenced action (hereinafter "Litigation").

3 1. With respect to witnesses whom any party to this Litigation expects to call as an
4 expert witness at trial ("testifying expert") the parties shall provide expert reports as defined in
5 Federal Rule of Civil Procedure 26(a)(2) at such times as specified by, as applicable, the Federal
6 Rules of Civil Procedure or a Scheduling or Case Management Order in this Action.

7 Contemporaneously with the provision of any such expert report, the party sponsoring such expert
8 shall identify any documents, data, and information relied upon by the expert in forming his or her
9 opinions. If the documents were produced in the Litigation, Bates numbers shall be provided in
10 addition to a description of the documents. If the documents were not produced in the Litigation,
11 copies of the documents shall be produced at the time the reports are exchanged.

12 2. To the extent that any testifying expert relies on, or the expert report includes or is
13 based on, exhibits, information or data processed or modeled by computer at the direction of a
14 testifying expert, machine readable copies of those exhibits, information and data (including all input
15 and output files) along with the appropriate computer programs, instructions, and field descriptions
16 shall be produced with the expert's report. All electronic data and data compilation shall be produced
17 in the same form or format in which it was used for the expert's calculations, in working order with
18 all links to other spreadsheets and/or underlying data. No party need produce computer software
19 programs that are reasonably and readily commercially available (*e.g.*, Microsoft Word and Microsoft
20 Excel).

21 3. The expert reports shall comply with Federal Rule of Civil Procedure 26(a)(2) and
22 Federal Rules of Evidence 702, 703, and 705.

23 4. Notwithstanding the parties' discovery obligations with respect to experts, the
24 following information and materials from testifying experts need not be produced by any party and
25 are not discoverable:

26 (a) Any draft reports, draft studies, draft affidavits, or draft work papers;
27 preliminary or intermediate calculations, computations, or data; or other preliminary, intermediate or
28 draft materials prepared by, for or at the direction of a testifying expert witness;

(b) Any written communication between counsel (or at counsel's direction) and the expert (and staff and assistants), except communications that identify or contain facts, data or assumptions that the expert relied upon in forming his or her opinions.

(c) Any notes or writings taken or prepared by or for a testifying expert witness in connection with this matter including, but not limited to correspondence or memos to or from, and notes of conversations with, the expert's assistants and/or clerical or support staff, other expert witnesses, non-testifying expert consultants, or attorneys for the party offering the testimony of such expert witness, unless the notes or other writings are relied upon by the expert in forming his or her opinions.

5. Notwithstanding paragraph 4 above, the parties shall disclose for each testifying expert the billing rate and total hours worked on this Litigation as of the time of deposition and trial.

6. Any fees charged by experts for time spent at depositions shall be paid by the party that requested the deposition.

7. The parties shall produce any engagement agreements with any testifying experts, to the extent such agreements exist, at the time the reports are exchanged.

IT IS SO AGREED.

DATED: October 14, 2009

GIBSON, DUNN & CRUTCHER LLP
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Austin V. Schwing
Lindsey E. Blenkhorn

By: /s/ George A. Nicoud III
George A. Nicoud III

Attorneys for Defendant
CISCO SYSTEMS, INC.

1 DATED: October 14, 2009

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17 Attorneys for Counterdefendants
18 MULTIVEN, INC., PINGSTA, and PETER ALFRED-
19 ADEKEYE

20 **ORDER**

21 PURSUANT TO STIPULATION, IT IS SO ORDERED

22 Dated: 10/15/09

23 
24 Richard Seeborg
25 United States Magistrate Judge

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